

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

Frank Betz Associates, Inc.,

Plaintiff,

vs.

Winchester Homes of GA Inc., Winchester
Homes of SC Inc., and Winchester Homes of
GA II, LLC,

Defendants.

C.A. No.: 1:24-cv-03055-MGL

COMPLAINT

(Jury Trial Demanded)

Frank Betz Associates, Inc. (“Betz”), complaining of Defendants as set forth herein, would respectfully show unto the Court and jury as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Betz is a Georgia corporation having its principal place of business in Woodstock, Georgia. Betz is a residential home designer.

2. Upon information and belief, Defendants Winchester Homes of GA Inc., Winchester Homes of SC Inc., and Winchester Homes of GA II, LLC (collectively “Defendants”) are affiliated Georgia companies with principal places of business in Augusta, Georgia. Defendants build and sell residential homes.

3. Defendants have built, advertised, and sold numerous houses in South Carolina, including infringing houses based on designs that are the subject matter of this action. Defendants’ website advertises that it builds homes in communities located in Aiken and North Augusta, South Carolina. <https://www.winchesterhomebuilders.com/new-homes>, last accessed May 16, 2024.

4. Defendants have conducted business in South Carolina on a regular and ongoing basis during all relevant times.

5. This is an action at law and in equity for copyright infringement arising under the laws of the United States of America, codified at 17 U.S.C. §§ 101 *et seq.*

6. This court has exclusive federal jurisdiction over the subject matter of Plaintiff's claims under 28 U.S.C. § 1338.

7. Defendants are subject to personal jurisdiction in this Court because they solicit and transact business in this district on a regular basis, and acts complained of herein occurred and are occurring in this district.

8. Venue in this district is proper under 28 U.S.C § 1400(a) because Defendants may be found in this district, as evidenced by the substantial number of infringing houses they have built in this district.

9. Many of the events giving rise to this action occurred in South Carolina as a result of Defendants' building infringing houses in South Carolina based on Betz's designs.

FACTUAL BACKGROUND

Betz and Its Original Works

10. Betz is engaged in the business of creating, designing, producing, distributing, marketing, and licensing original architectural works, architectural working drawings, and related technical drawings for residential designs. Betz has achieved national recognition for the quality and originality of its work.

11. As to each of the Betz designs at issue in this action (identified individually below), each such design was created by a Betz designer either starting with a blank piece of paper or

modifying an existing Betz design that began with a blank piece of paper and was created as described herein. For each such design,

- a. the arrangement, composition, and proportions of exterior features and massing came from the designer's mind and creativity;
- b. the shape, size, location, and proportions of interior spaces came from the designer's mind and creativity;
- c. the placement of design features and elements came from the designer's mind and creativity;
- d. the placement of architectural details came from the designer's mind and creativity.

12. Putting together all of the pieces and shapes that make up each of the Betz designs at issue in this action is a product of the designer's creativity. The overall configuration and arrangement of spaces, elements, and features in the design is not a collection or compilation of standard rooms and elements of pre-existing forms. To the contrary, the shapes and sizes of the rooms and spaces, the shapes and sizes of the exterior elements and features, and the piecing together and placement of all of the spaces, design features and other architectural details to fit them into an overall whole come from the mind and creativity of the designer as the design is being created.

13. In creating each of the Betz designs at issue in this case, the designer had many different architectural and design styles and hybrid styles from which to choose, both as to the exterior and interior; a wide range of possible overall square footages; infinite variations of the shape of the exterior "footprint" and exterior elevations; and infinite variations of how and where the designer placed rooms and spaces together within the footprint and how these in turn affected

the exterior elevations; all of which came from the designer's hard work, imagination, and creativity, and not through collecting and assembling standard or pre-existing forms.

14. As part of its business, Betz has created the following architectural works and/or technical drawings (collectively referred to, along with any predecessors or derivatives thereof, as the "Betz Designs"), with respect to each of which the preceding allegations are incorporated by reference:

- a. Summerlyn;
- b. Yarmouth;
- c. Highland Point;
- d. McCormick;
- e. Magnolia Lane;
- f. Creekstone/Pfeiffer;
- g. Pfeiffer/Glenbrooke;
- h. Thorndale;
- i. Oak Grove;
- j. Chesdin; and
- k. Nickerson.

15. The copyright in each of these Betz Designs has been registered with the United States Copyright Office.

16. The Betz Designs contain material wholly original to Betz that is copyrightable subject matter under 17 U.S.C. §§ 101 et seq.

17. Betz is currently, and at all relevant times has been, the sole owner of all right, title, and interest in and to the copyrights in the Betz Designs.

18. All lawful copies and distributions of the Betz Designs have been made by Betz, or under Betz's consent or permission.

19. The Betz Designs have been marketed, distributed, and constructed on a nationwide basis and in the Defendants' market area, and Defendants have, therefore, had access to them.

Defendants and Their Actions

20. Defendants are in the business of building, constructing, marketing, advertising, and selling houses.

21. Defendants have published, distributed, marketed, sold, and/or advertised certain architectural designs for single family residential homes, each consisting of a floor plan and exterior elevations, and have built, constructed, marketed, advertised, and sold homes constructed using those architectural designs, with the following plan names: "Crenshaw," "Oconee," "Marshall," "Gentry," "Finley," "Homestead," "Charleston," "Harbor," "Wood Haven," "Jasper," and "Aspen" (all of the foregoing collectively referred to, along with any predecessors, copies, or derivatives thereof, under the same or different names, as the "Infringing Designs").

22. The Infringing Designs are copies or derivatives of the copyrighted Betz Designs.

23. Defendants do not have licenses to any of the Betz Designs. Nonetheless, Defendants have constructed numerous houses from their infringing copies or derivatives of the Betz Designs, including over 60 in South Carolina. All of the homes Defendants have constructed based on the Betz Designs or derivatives of the Betz Designs are unlicensed and infringing homes.

24. Defendants have also reproduced and distributed, including through Defendants' website, copies or derivatives of the Betz Designs without permission, thereby infringing Betz's copyrights in the Designs.

FIRST CAUSE OF ACTION

(Copyright Infringement/Violation of 17 U.S.C. §§ 101, *et seq.*)

25. Betz incorporates all prior paragraphs as if fully set forth herein.

26. Defendants have violated and, upon information and belief, continue to violate Betz's exclusive rights in the copyrighted Betz Designs (including the right to reproduce, right to prepare and sell derivative works, and right to vend) by copying, publishing, distributing, advertising, marketing, selling, building, and/or constructing in the marketplace in this district and elsewhere, architectural works, constructed buildings, and/or drawings which were copied or otherwise derived from the Betz Designs, in that each of the following Infringing Designs of Defendants (and any copies or derivatives thereof under the same name or a different name) infringes the respective Betz Design (and any predecessor or derivative thereof):

- a. Defendants' "Crenshaw" design (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "Summerlyn" design (and any predecessor or derivative thereof);
- b. Defendants' "Oconee" design (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "Yarmouth" design (and any predecessor or derivative thereof);
- c. Defendants' "Marshall" design (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "Highland Point" design (and any predecessor or derivative thereof);
- d. Defendants' "Gentry" design (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "McCormick" design (and any predecessor or derivative thereof);

- e. Defendants' "Finley" design (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "Magnolia Lane" design (and any predecessor or derivative thereof);
- f. Defendants' "Homestead" design (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "Creekstone/Pfeiffer" designs (and any predecessor or derivative thereof);
- g. Defendants' "Charleston" (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "Pfeiffer/Glenbrooke" designs (and any predecessor or derivative thereof);
- h. Defendants' "Harbor" design (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "Thorndale" design (and any predecessor or derivative thereof);
- i. Defendants' "Wood Haven" design (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "Oak Grove" design (and any predecessor or derivative thereof);
- j. Defendants' "Jasper" design (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "Chesdin" design (and any predecessor or derivative thereof); and
- k. Defendants' "Aspen" design (and any copies or derivatives thereof under the same name or a different name) infringes on Betz's "Nickerson" design (and any predecessor or derivative thereof).

27. For each Infringing Design, in relation to the respective infringed Betz Design, the overall arrangement and composition of spaces in the design, the placement of design features and

elements, the size and shape of the exterior elevations, the relative size, shape, locations and proportions of individual rooms and elements in the design, and how all of these spaces, elements, and features are combined in the design as a whole, are substantially similar to the corresponding aspects of each respective infringed Betz Design, all of which are original to Betz.

28. For all of the similarities between the corresponding designs, these similar spaces, arrangements, and features do not have to be designed the way they are designed, are not dictated by construction requirements, code requirements, or utilitarian concerns, could have been done in numerous different ways, and do not derive from a collection and assembly of standard shapes and forms that already existed.

29. As a direct and proximate result of Defendants' wrongful conduct, Betz has been damaged.

30. Betz generally avers that all conditions precedent to its rights of recovery have occurred or have been performed.

REQUEST FOR RELIEF

31. Betz incorporates all prior paragraphs as if set forth fully herein.

32. As a result of Defendants' wrongful conduct described above, Betz respectfully requests that the Court enter judgment against the Defendants:

a. Permanently enjoining and restraining Defendants and their employees, representatives, and agents from:

1. imitating, copying, or making any unauthorized use of any of the Betz Designs, any other of Betz's copyrighted designs, any of the Infringing Designs, or any predecessors or derivatives thereof in any manner, and from publishing, distributing, selling, advertising,

marketing, building, constructing, or otherwise using any copies or derivatives of any of the Betz Designs, any other of Betz's copyrighted designs, and predecessors or derivatives thereof, including, but not limited to, the Infringing Designs;

2. manufacturing, producing, building, constructing, distributing, circulating, selling, offering for sale, advertising, promoting, or displaying any product bearing any simulation, reproduction, counterfeit, copy, derivative, or colorable imitation of any of the Betz Designs, any other of Betz's copyrighted designs without appropriate licensing from Betz, and any predecessors or derivatives thereof, including, but not limited to, the Infringing Designs; and
3. using any simulation, reproduction, counterfeit, copy, derivative, or colorable imitation of any of the Betz Designs, any other of Betz's copyrighted designs, without appropriate license from Betz, or any predecessors or derivatives thereof, including, but not limited to, the Infringing Designs, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, building, construction, circulation, or distribution of any product or service;

- b. Directing Defendants, pursuant to 17 U.S.C. § 503, to deliver up to be impounded during the pendency of this action all copies or derivatives of the Infringing Designs, the Betz Designs, any other of Betz's copyrighted designs without appropriate license from Betz, or of any predecessors or derivatives thereof in

Defendants' possession or under Defendants' control, and to deliver up for destruction those designs and all infringing copies;

- c. Directing Defendants to disclose to Betz the names and addresses of all persons and entities who have purchased or licensed any of the Infringing Designs and any and all other of Defendants' designs copied or derived from any Betz copyrighted design without appropriate license from Betz, who have had homes constructed from any such designs, or who have purchased homes constructed from them;
- d. Directing Defendants to issue a recall notice to each person who has purchased or licensed any of the Infringing Designs and any and all other of Defendants' designs copied or derived from any copyrighted Betz Design without appropriate license from Betz, or who has had a home constructed from any of such designs, or who has purchased a home constructed from any such designs, informing each such person that such design has been determined to constitute an infringement of Betz's copyright and that the person cannot resell or vend such design or any home constructed from it without the permission of Betz;
- e. Directing Defendants, jointly and severally, to pay Betz such damages as the jury determines Betz has sustained as a consequence of Defendants' copyright infringement, and to account for and pay Betz damages for all gains, profits, and advantages derived by Defendants from their infringements of Betz's copyrights under 17 U.S.C § 504(b), or at Betz's election, statutory damages under 17 U.S.C. § 504(c), which permits a recovery of up to \$150,000 for infringement of each copyrighted work in the event the jury determines willful infringement by the Defendants;

- f. Directing Defendants, jointly and severally, to pay Betz's reasonable attorneys' fees and costs pursuant to 17 U.S.C § 505; and
- g. Awarding Betz such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

33. A trial by jury is demanded as to all issues to the extent permitted by law.

Respectfully submitted,

Date: May 16, 2024

s/Wallace K. Lightsey

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